IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

WP(C).No. 14710 of 2006(A)

PETITIONER:

JANAKI DAS,
W/O. LATE T.V. DAS @ VARGHESE ABRAHAM,
ASSARIPARAMBIL, MUNICIPAL OFFICE WARD, ALAPPUZHA.

BY ADV. SRI.K.K.SATHEESH

RESPONDENTS:
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1. **UNION OF INDIA,**
   REPRESENTED BY THE SECRETARY, MINISTRY OF
   HOME AFFAIRS, FREEDOM FIGHTERS' DIVISION,
   LOK NAYAK BHAWAN, KHAN MARKET, NEW DELHI-110 003.

2. **STATE OF KERALA,**
   REPRESENTED BY THE SECRETARY,
   GENERAL ADMINISTRATION (FFP.A) DEPARTMENT,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

BY ADV. SRI.K.P.MUJEEB, ADDL.CGSC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.14710/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE EXTRACT OF REGISTER OF UNDERTRIAL PRISONERS OF THE CENTRAL PRISON , TRIVANDRUM ISSUED BY THE SUPDT. ALONGWITH A COVERING LETTER ISSUED BY HIM DT. 5.7.73.

EXT.P2:- COPY OF THE PROCEEDINGS OF THE DISTRICT COLLECTOR, ALLEPPEY VIDE ORDER NO.R.DIS. 7261/72/F6 DT. 15.3.72.

EXT.P3:- COPY OF THE LETTER NO.F6-2733/73 DT. 8.8.75 ISSUED BY THE DISTRICT COLLECTOR, ALAPPUZHA INVITING THE PETITIONER TO RECEIVE THE " THAMRAPATHRA".

EXT.P4:- COPY OF THE APPLICATION SUBMITTED BY THE EPTITION FOR THE GRANT OF SSS PENSION TO THE RESPONDENTS DT. 24.3.98.

EXT.P5:- COPY OF THE CERTIFICATE NO.K.DIS 7034/73 DT. 11.7. 73 ISSUED BY THE TAHSILDAR AMBALAPUZHA.

EXT.P6:- COPY OF THE AFFIDAVIT DULY ATTESTED BY THE JUDICIAL IST CLASS MAGISTRATE, ALAPPUZHA SUBMITTED BY THE PETITIONER DT. 31.7.01.

EXT.P7:- COPY OF THE COMMUNICATION NO.68519/FFF A2/2004/GAD DT. 30.8.05 ISSUED BY the 2ND RESPONDENT TO THE 1ST RESPONDENT.

EXT.P8:- COPY OF THE JUDGMENT DT. 25.11.05 OF THIS HONOURABLE COURT IN WP(C) NO.18338/04.

EXT.P9:- COPY OF THE COMMUNICATION NO.52/CC/K/47/04-(SZ) DT. 13.4.06 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.

EXT.P10:- COPY OF THE REPRESENTATION DT. 3.5.06 SUBMITTED BY THE PETITIONER TO THE 1ST RESPONDENT.

EXT.P11:- COPY OF THE IDENTIFICATION CERTIFICATE ISSUED BY THE TAHSILDAR , AMBALAPUZHA DT. 28.4.06.

/TRUE COPY/

P.S. TO JUDGE

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T.R. Ramachandran Nair, J.

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W.P.(C).NO.14710 of 2006-A

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Dated this the 8th day of August, 2007

JUDGMENT

This writ petition was originally filed by Smt. Janaki Das, widow of late T.V. Das claiming pension under the Swathantrata Sainik Samman Pension Scheme. Pending the writ petition, she died on 17.5.2007. I.A. No.10561/2007 is filed by her son for impleading himself as a supplementrary petitioner in the writ petition. The said application is allowed and the petitioner in the application will be impleaded as supplementary petitioner in the writ petition.

2. The case pleaded in the writ petition for sanction of pension is that Shri T.V. Das was a freedom fighter who had undergone under trial imprisonment in the Central Prison, Trivandrum for a period of more than 8 months from 27.4.1123 to 25.1.1124 in connection with case No.P.E.9/1122 on the file of the Special Magistrate Court, Alleppey. He was acquitted and discharged by the Additional Sessions Judge, Trivandrum on 25.1.1124. Ext.P1 is the true extract of the register of under-trial prisoners of the Central Prison, Trivandrum. This is issued to Shri T.V. Das whose original name was Varghese Abraham. Shri T.V. Das was

granted pension under the Kerala Freedom Fighters' Pension Scheme as per Ext.P2. A reading of Ext.P2 will show that it was issued in the name of Shri T.V. Das. He was also the holder of 'Thamrapathra' which is evidenced by Ext.P3 communication dated 8.8.1975 of the District Collector, Alappuzha. It shows that the same is addressed to Shri T.V. Das. Ext.P4 is the application submitted by the mother of the supplementary petitioner seeking pension. Along with the application, Ext.P5 certificate of the Tahsildar, Ambalapuzha certifying that Shri T.V. Das and Shri Varghese Abraham are one and the same person, has also been produced. Ext.P7 is the forwarding letter from the Principal Secretary to Government of India recommending the grant of pension under the S.S.S. Pension Scheme. The under-trial period of Shri T.V. Das is also clearly mentioned in the said letter. The widow of late Shri T.V. Das had filed Writ Petition No.18338/2004 which was disposed of by Ext.P8 judgment directing the first respondent to consider and pass orders on the application within a period of three months. It is thereafter that Ext.P9 order has been passed rejecting the claim.

3. The main reasons for rejection are that the true extract of the register of under-trial prisoners is not in the name of Shri T.V. Das and therefore the acceptable primary record has not been produced by the late widow. The other ground is that the non-availability of record certificate

has not been produced and also that no valid co-prisoner's certificate has been produced.

4. It is clear from the above that the fact that Shri T.V.Das and Shri Varghese Abraham is the same person, has been lost sight of by the first respondent. The said fact is evident from Exts.P2 and P3 and also the identification certificate issued by the Tahsildar, Ambalapuzha, Ext.P5. In Ext.P7 recommendation of the State Government also, the period of under-trial imprisonment is mentioned and the name of the late husband of the petitioner has been noted as T.V. Das. Therefore, the reasons stated in Ext.P9 that the State Government has not verified the said fact, does not appear to be correct. It is clear that the State Government while forwarding Ext.P7 has clearly verified this fact and has chosen to recommend the application as there was no dispute regarding the identity also. Learned counsel for the petitioner invited my attention to Ext.P11 identification certificate issued by the Tahsildar, Ambalapuzha certifying that Shri T.V. Das (late), Assariparambil, Municipal Office Ward, Alappuzha and Shri Varghese Abraham Plamparambil, Alappuzha are one and the same person.

5. The first respondent has not filed any counter affidavit in this writ petition. Since the main ground for rejection of the claim is that the State Government has not verified whether Shri Varghese Abraham and Shri T.V.

Das are one and the same person, I find that the same is erroneous in view of the aspects reflected in the various records produced by late widow of Shri T.V. Das. He was granted pension by the State Government and he was also the holder of "Thamrapathra". Since there was a valid record, i.e., extract of the register of under-trial prisoners, there was no question of producing a non availability of records certificate. Therefore, the second reason stated in Ext.P9 also is unsupportable. The other reason is that a valid co-prisoner's certificate has not been produced. Since the primary evidence is available, it is not necessary to rely upon a co-prisoner's certificate also.

6. For all the above reasons, it is clear that the application was liable to be sanctioned. It is declared that the widow of late Shri T.V. Das was entitled for grant of pension.

7. Now that the petitioner Smt. Janaki Das is no more, the eligibility of the son, the supplementary petitioner is only to get arrears of pension. The same is liable to be granted from the date of receipt of the application (Ext.P4). The application is dated 24.3.1998 and learned counsel for the petitioner produced before me for perusal the acknowledgment card evidencing receipt of the same on 27.3.1998. In the light of the decision of a Division Bench of this court in **Union of India v. Radhamony** (2005 (4)

KLT 27), the relevant date is the date on which the application is received by the authority. Therefore, the arrears with effect from the date of receipt of the application till the date of death of Smt. Janaki Das (17.5.2007) will be disbursed within a period of three months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above. No costs.

(T.R. Ramachandran Nair, Judge.)

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